IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 16TH NOVEMBER 2006 / 25TH KARTHIKA 1928

OP.No. 31289 of 2001(Y)

PETITIONER:

SAINUDHEEN.A.V.
THRIKKALAYOOR HOUSE
KIZHUPARAMBA P.O.
ACEACODE
MALAPPURAM DISTRICT

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:
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1. STATE OF KERALA, REP. BY SERCRETARY
TO GOVT., DEPARTMENT OF GENERAL EDUCATION
SECRETATIAT, THIRUVANANTHAPURAM

2. THE DEPUTY DIRECTOR OF EDUCATION
KANNUR.

3. THE KERALA PUBLIC SERVICE COMMISSION
REP.BY ITS SERCRETARY, K.P.S.C,
PATTOM, THIRUVANANTHAPURAM

4. SIDHIK.C.S., FULL TIME TEACHER (ARABIC)
GOVT. H.S., ANGADIMUGAR, P.O.ANGADIMUGAR
KASARGOD DISTRICT.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
GOVERNMENT PLEADER SRI.T.T.MUHAMOOD

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.50949/01 IN O.P.NO.31289/01

DISMISSED.

16/11/06 **SD/-, K.M.JOSEPH, JUDGE.**

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE RANKED LIST FOR THE POST OF H.S.A.(ARABIC) IN KANNUR.**
EXT.P2	**TRUE COPY OF THE AFFIDAVIT OF THE 5TH RESPONDENT.**
EXT.P3	**TRUE COPY OF THE APPOINTMENT MEMO NO.A2/23723/98 DATED 13-08-2001.**

/True Copy/

K.M.JOSEPH, J.

O.P.No.31289 OF 2001

Dated this the 16th day of November,2006.

JUDGMENT

The case of the petitioner is as follows. Petitioner is ranked at 29 in Ext.P1 rank list published by the kerala Public Service Commission for appointment of H.S.A. (Arabic) in Kasargod district. 5th respondent is ranked at 26 in the said list. According to the petitioner 5th respondent was asked to produce the creamy-layer certificate. In November 2000, 5th respondent sent a letter to the P.S.C. stating that he does not intend to join the post and therefore he need not be advised. He also requested to remove his name from the list.

2. Petitioner relies on Ext.P2 affidavit dated 07/10/2001 sworn by the fifth respondent. Person with rank No.27 was already appointed. Person with rank No.28 was issued advice memo. But she did not join. Therefore, a non joining duty vacancy arose during the pendency of the ranked list. Against the said vacancy 4th respondent has issued advice memo to the 5th respondent. Ext.P3 is the order of appointment dated 13/08/01. It is the case of the petitioner that in view of the communication of the 5th respondent that he does not intend to join, the Public Service Commission ought to have issued the advise memo to the petitioner instead of respondent No.5. It is the

case that in this case there is a valid relinquishment by the 5th respondent as contemplated under Rule 18(ii) of the Public Service Commission rules of procedure. Despite valid relinquishment, 4th respondent cannot issue advice memo to the 5th respondent vide Ext.P3. It is against Rule 18(ii). This is the case of the petitioner.

3. Though service was declared on 5th respondent, there is no appearance for him. In the counter affidavit filed on behalf of respondents 3 and 4, it is stated as follows:

> "The averment of the petitioner that the 5th respondent has relinquished his claim is not correct. The candidate who has relinquished his claim is Sideek.P and his relinquishment was received on 13-07-2001. It is submitted that on 10-06-2001 two candidates have been advised, one candidate under the OC turn and other candidate under B.C. turn i.e. Rank NO. 25 Abdulla.K. under OC tuen and Rank No.27 Abdul Kareem under B.C.Turn. The candidate Abdulla advised under O.C. turn has not joined duty and hence the next candidate Sidhik.C.S. the 5th respondent was advised. His N.J.D. vacancy was reported to the Commission only on 11-1-02. By that time the ranked list expired. The new ranked list came into force on 31-08-05 and that N.J.D. vacancy was also satisfied. The averment of the petitioner that the 5th respondent has relinquished his claim is absolutely incorrect.
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> It is submitted that the 5th respondent was advised for appointment to the post on 26-07-2001 and the appointment order issued on 13-08-2001. He was also not joined duty and that N.J.D. vacancy was reported to the Commission on 11-1-2002. By that time the ranked list expired. The new ranked list came into force on 31-08-2005 and that N.J.D. vacancy was also satisfied."

4. Therefore the case of the Commission is that 5th respondent

has not given any relinquishment. The averment that the 5th respondent has given relinquishment is disputed. The N.J.D. vacancy arising from the advice to the 5th respondent is not acted upon. Admittedly it is reported after the expiry of the list. Of course, relinquishment to be valid under Rule 18(ii) must made before the receipt of the requisition for advice.

In the state of pleadings, I feel that petitioner has not made out any case at all for interference. Therefore, the writ petition is dismissed.

K.M.JOSEPH.
JUDGE.

sv.